

## SMSPup Mobile – Member Rewards Terms of Service

### 1. Introduction

The [www.smspupmobile.com.au](http://www.smspupmobile.com.au) Web site ("Site") and service ("Service") is operated under licence by Reward Mobile Pty Ltd A.C.N. 41 111 772 206 (referred to hereafter as "SMSPup Mobile").

### 2. General Disclaimer

Material and content published on the Forum area of this site represents the views and opinions of participating members of the general public. Due to the unsolicited and unauthenticated nature of the Forum methodology, SMSPup Mobile does not warrant that the results will represent the opinions held by the wider community.

AS SUCH, ALL CONTENT AND INFORMATION ARE PRESENTED FOR ENTERTAINMENT PURPOSES ONLY.

SMSPup Mobile does not necessarily endorse, support, sanction, encourage, verify, or agree with the comments, views, opinions, or statements posted in Polls, bulletin boards, forums or otherwise contained in the Service.

The information on this site is not intended to be, nor should it solely be relied upon as a substitute for formal business research, academic or personal research.

### 3. Acceptance of Terms

Membership of the Service is conditional upon acceptance and compliance with the terms, conditions, notices and disclaimers contained in this document and elsewhere on the Site, referred to hereafter collectively as the 'Terms of Service' ("TOS").

BY SUBMITTING THE MEMBERSHIP APPLICATION ON THE SITE OR USING ANY OF THE SERVICES AVAILABLE ON OR THROUGH THE SITE, YOU ARE INDICATING YOUR AGREEMENT TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THESE TOS. If you do not agree to our TOS, which includes by incorporation our Privacy Policy, you must immediately terminate your account by following the instructions provided on the Site.

This Site is provided for the personal enjoyment of Members subject to these TOS and all modifications thereto, and any other rules or guidelines, including any game or sweepstakes rules that may be published from time to time by SMSPup Mobile on this Site. SMSPup Mobile reserves the right to modify the Site from time to time, for any reason, and without

notice, including the right to terminate the services. You should check these Terms of Service periodically for changes, as we reserve the right to modify them at any time. The date of the current version of these Terms of Service is noted above. Your use of the Site following any modifications to these Terms of Service shall be deemed to be your assent to any such modifications.

#### 4. Description of Service

The Service allows you to access online auctions that originate from the Site and any other services that are introduced from time to time. The Service is provided to you at no charge, however you must: (1) pay all costs, including equipment and access charges associated with accessing the Internet; (2) pay all costs, including equipment and access charges associated with your mobile telephone service; and (3) comply with the TOS. Members agree to receive promotional emails from SMSPup Mobile and promotional Mobile messages.

#### 5. SMSPup Mobile Reward System

Members may be awarded points ("Points") for participating in certain activities such as completing surveys; reading and responding to email promotions; and by other methods as notified from time to time on the Site.

SMSPup Mobile Points can be redeemed for participation in online auctions from the Site; ringtones and other mobile content; and other benefits as notified from time to time on the site. To keep the system fair for new members, only Points accumulated from the published start date of the auction may be used to bid in that auction.

SMSPup Mobile Points have no value outside of the SMSPup Mobile system and can not be redeemed for cash. SMSPup Mobile Points can not be transferred to other members.

SMSPup Mobile Points are valid for 24 months from the time they are acquired, unless redeemed or otherwise stated.

#### 6. Conditions of Membership

SMSPup Mobile Members must agree to accept email and Mobile promotions from SMSPup Mobile.

SMSPup Mobile reserves the right to send you email messages from time to time for which you may not be rewarded. Such messages may include system updates; bulletins; administrative announcements; special requests, etc., and may be sent via email or regular mail. SMSPup Mobile is under no obligation to provide you with any particular number of opportunities to earn SMSPup Mobile Points or to send messages to you.

As a condition of your membership you represent and warrant that:

- a. You are at least 18 years of age;
- b. You are a permanent resident of Australia;
- c. All information supplied by you is complete, true and accurate.
- d. You understand and agree that if your account is terminated for your breach of this agreement, any accrued SMSPup Mobile Points will be forfeited and you will lose the right to participate in the program, including any current auctions. Interpretation of what constitutes a breach of this agreement shall be at the sole discretion of SMSPup Mobile.
- e. You understand and agree that in addition to these TOS, each draw will be governed by the official terms of that draw as notified on the Site.
- f. You agree that no interest shall accrue and that SMSPup Mobile Points have no monetary value. SMSPup Mobile uses a double opt-in system that requires you to respond to a registration email before your account is activated. If you do not activate your account and complete the lifestyle survey you will not be credited with SMSPup Mobile Points. In the event that you participate in a transaction with a reward partner that would make you eligible to collect SMSPup Mobile Points, SMSPup Mobile will make reasonable efforts to have the points credited to your account. You acknowledge that in order for us to award points that your browser must accept cookies. You acknowledge that certain firewall or filtering software may cause points to not be credited to your account.
- g. You understand and agree that SMSPup Mobile will not be responsible to you or any governing body for any taxes or the loss of any benefits as a result of being issued SMSPup Mobile points, rewards or prizes.
- h. You must not maintain more than one account on the Site and understand that a limit of 3 memberships applies to one postal address.
- i. You must inform SMSPup Mobile of any change in your personal details, including email address and street address. Contact details and preferences must be updated using the facility provided once you have logged in to the site. Rewards and prizes will be made in favour of you and will be delivered to the address specified in your account profile. Prizes are not transferable to any other person.
- j. You will not send unsolicited email (SPAM) to strangers to promote the SMSPup Mobile Service.
- k. You will not post or SMS materials that contain or encourage indecent, defamatory, menacing, offensive or unlawful acts, or otherwise bring the SMSPup Mobile site into disrepute.
- l. You will not create a false identity for the purpose of misleading others as to the identity of the sender or the origin of a message.
- m. You will not use the Service to send unsolicited or commercial messages. This means that you must only send personal messages and have the consent of the recipient before sending any message from the Site.

- n. You will keep your account username and password details secure and will not allow other people to access your account. In the event that you suspect a security breach you will immediately notify SMSPup Mobile.
- o. You will not use any automated means including scripts, spiders, robots, bots, crawlers or the like in connection with your participation in collecting SMSPup Mobile Points or with any other activity on the Site.

SMSPup Mobile may reject any new member application from any person with or without cause at its sole discretion. SMSPup Mobile reserves the right to terminate a Member's account in the event that the Member provides false or misleading membership information or otherwise violates these TOS.

Employees of Empowered Communications and Reward Mobile and their immediate families are ineligible to participate in the SMSPup Mobile auction program and prize draws.

### 7. Third Party Promotions

As a part of the Site and the Service you may be presented with promotions, advertisements and offers provided by third parties ("Third Party Promotions"). All Third Party Promotions are paid for by the advertiser and do not represent an endorsement or recommendation by SMSPup Mobile or its affiliates, directors or employees. Any dealings with any advertiser as a result of Third Party Promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such dealings or promotions, are solely between you and the advertiser or other third party. You agree that SMSPup Mobile will not be held responsible or liable for any part of any such dealings or promotions.

### 8. Linked Sites

SMSPup Mobile may provide links to third parties' Web sites ("Linked Sites"). Unless otherwise noted on the Site, Linked Sites are not reviewed, controlled or examined by SMSPup Mobile in any way. SMSPup Mobile is not responsible for the content, availability, advertising, products or other materials of any such Linked Sites, or any additional links contained therein. Except as otherwise noted on the Site, these links do not imply SMSPup Mobile's endorsement of or association with the Linked Sites. It is your sole responsibility to comply with the appropriate rules and guidelines, if any, applicable to the use of the Linked Sites. In no event shall SMSPup Mobile be liable, directly or indirectly, to anyone for any loss or damage arising from or occasioned by the creation or use of links to the Linked Sites, the Linked Sites themselves, or the information or material accessed through these Linked Sites. You should direct any concerns to that site's administrator or Webmaster. SMSPup Mobile reserves the exclusive right, at its sole discretion, to add, change, decline or remove, without notice, any feature or link to any of the Linked Sites from the Site and/or introduce different features or links to different Members.

## 9. Privacy Policy

The information collected and used by this Site is governed by the SMSPup Mobile Privacy Policy.

## 10. Disclaimer of Warranties

To the extent permitted by law, all warranties, conditions and representations about the Service, the availability of the Service for access and use, the products and services advertised, offered to be supplied or supplied via the Service and the information provided on the Service are excluded. In particular, to that extent, SMSPup Mobile excludes any warranty that the Service will be uninterrupted or error-free; that defects will be corrected, that the Service or the server that makes it available, are free of viruses or other harmful components, that the use or results of the use of the Service, or that the materials made available as part of the Service, will be correct, accurate, timely or otherwise reliable. If a term is implied by law into these TOS and the law prohibits provisions in a contract excluding or modifying liability under that term, then it will be included in these TOS. However, SMSPup Mobile's liability for breach of such term will be limited, at its option, to one or more of the following (a) in relation to goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of such goods; (iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or (iv) payment of the cost of having the goods repaired; (b) in relation to services: (i) the supply of services again; or (ii) the payment of the cost of having the services supplied again.

## 11. Limitation of Liability

To the extent permitted by law, SMSPup Mobile, its parents, subsidiaries, affiliates, officers and employees shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if SMSPup Mobile has been advised of the possibility of such damages), resulting from:

- the use or the inability to use the service;
- the use of, or reliance on any information published on the site;
- the cost of procurement of substitute goods and services resulting from any goods, data, information or services
- purchased or obtained or messages received or transactions entered into through or from the service;
- unauthorised access to or alteration of your transmissions or data;
- statements or conduct of any third party on the service; or
- any other matter relating to the service.

SMSPup Mobile shall not be obliged to issue any reward or prize that relates to, or arises out of misuse or abuse of the site or to any person who has supplied false or misleading personal information.

## 12. Indemnification

You indemnify SMSPup Mobile, its parents, subsidiaries, affiliates, officers and employees, harmless from and against all actions, claims, suits, demands, damages, liabilities, costs or expenses, including reasonable legal fees, arising out of, or in any way connected to the use of the Site or information or content published therein; your participation in the Site's member program or that of someone using your username and password; or your inability to use the Site.

## 13. Opting out of Promotional Material

You may opt out of promotional material with SMSPup Mobile at any time by using the facility provided on the Site. If you opt out you will forfeit your SMSPup Mobile Points and you will not be eligible to participate in any auction or prize draw from the date you opted out. You may also lose the Member's discount that you receive for opting in to receive promotional material.

## 14. Intellectual Property

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## 15. Applicable Law

These terms of service are governed by the laws in force in Victoria, Australia and the parties agree to be bound by the non-exclusive jurisdiction of the Courts of Victoria, Australia. In the event that any portion of this Agreement is deemed by a court to be invalid, the remaining provisions shall remain in full force and effect.